# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

HONG G. DECHANT	)
Claimant	)
VS.	)
	) Docket No. 1,021,245
WAL-MART	)
Respondent	)
AND	
	)
AMERICAN HOME ASSURANCE COMPANY	)
Insurance Carrier	)

#### ORDER

Respondent appeals the July 19, 2005 preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded benefits after the Administrative Law Judge determined that claimant was not terminated for cause and was, therefore, entitled to receive temporary total disability compensation benefits. It was not disputed that claimant suffered a compensable injury on July 4, 2004.

### Issues

- (1) Was claimant terminated for just cause, thereby entitling respondent to deny temporary total disability compensation benefits?
- (2) Does the Board have jurisdiction over this matter?

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that it does not have jurisdiction over this matter and respondent's appeal should be dismissed.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?

- 2. Did the injury arise out of and in the course of employment?
- 3. Did the worker provide both timely notice and timely written claim of accident?
- 4. Is there any defense which goes to the compensability of the claim?<sup>1</sup>

Additionally, the Board may review those preliminary hearing orders where a judge has exceeded his or her jurisdiction or authority in awarding benefits.<sup>2</sup>

In this instance, it is not disputed that claimant suffered a compensable accidental injury while employed with respondent. The only dispute is whether claimant's termination would justify respondent denying claimant temporary total disability compensation benefits. This goes to the question of whether claimant is temporarily totally disabled. That is not an issue over which the Board takes jurisdiction from a preliminary hearing. Therefore, the appeal by respondent from the Order of July 19, 2005, should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated July 19, 2005, remains in full force and effect.

#### IT IS SO ORDERED.

Dated this	day of October.	2005
טמנכט נוווס	uay of October.	<b>ZUUJ.</b>

# **BOARD MEMBER**

c: Gary K. Albin, Attorney for Claimant
James B. Biggs, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

<sup>&</sup>lt;sup>1</sup> K.S.A. 44-534a.

<sup>&</sup>lt;sup>2</sup> K.S.A. 2004 Supp. 44-551.